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I N T R O D U C T I O N

by Dr Peter BRUGGER

The European Company - the Societas Euripaea - is to be the most important instrument by which firms in the Community will be enabled to make full use of the opportunities offered by the common market and to overcome increasing competition by firms from third countries, both on the Community market and on the world market.

The proposal from the Commission to the Council concerning the statute of a European Company is aimed at the introduction of a Community law for certain forms of limited companies, considered as particularly suitable undertakings for promoting the development and consolidation of the economy of the Community.

The Commission of the Communities has proceeded on the assumption that the establishment of limited companies under European law will promote transnational cooperation between leading businesses in the Community, broaden the basis for research, production and distribution, allow a beneficial synthesis of capital and labour and thus enhance the social achievements at Community level, in order to advance towards the objective defined in Article 2 of the EEC Treaty, in particular that of the balanced development of the various branches of industry throughout the Community and of paving the way towards closer relations between the forces of the economy in the Member States. The latter aim itself is again an essential prerequisite for the achievement of European economic union.

The formation of European companies will also certainly bring with it positive political effects. It will affect not only industry and trade. New relations will develop between companies, their shareholders and employees. Public opinion will become used to the 'European' designation of companies founded in this way, and will become increasingly conscious of the need for mutual interpenetration of the economies of the Community. The outcome could then be a concentration and strengthening of the key industries, for example the nuclear industry, the aircraft industry, and the electronics industry. In this way, Europe would also achieve increasing influence at the level of international politics.

Certainly the proposal for a regulation has its faults and shortcomings. In addition, in the individual Member States, there are radical differences in the legal regulations and their practical interpretation. It will not be difficult, however, to make the necessary improvements as soon as the requisite experience has been gained after this regulation comes into force. In order to gather experience, we have to agree to make a shart, even with something

which is not quite perfect. The institutions of the Community, therefore, in the service of Europe and the Europeans should not miss this unique opportunity offered to them of improving the means of collaboration in the economic sphere and promoting fairer and more human relations between the two sides of industry.

WILLEM SCHOLTEN: THE EUROPEAN COMPANY, A COURAGEOUS PROJECT

The proposal from the European Commission for a regulation concerning the statute for a European Company was warmly welcomed by the Christian-Democratic Group in the European Parliament during the July part-session. The group was critical of certain sections, but fully agreed with the main objective of the proposal which can be summarized as follows: the creation of a new legal instrument for the development of the economy, both national and European.

This summary of the main objective of the proposal also makes it quite clear in what light I think this proposal for the creation of a new legal form in Europe must be seen. Namely, from the point of view of the economic development of Europe. Looking back over the long and intensive discussions on this proposal over the past years, it may well be thought that, in the first instance, the basis for the proposal - and thus its justification - lies in the creation of employees' participation. Undoubtedly, this is a very important feature of the problem, but it does not explain the reason for a European company. The primary and crucial reason behind the proposal is of an economic nature: the promotion of cooperation in trade and industry in the Member States across national boundaries. Is there a need for such an instrument alongside what is already possible on the basis of national legislation, and particularly when the project for harmonization of national company law is completed? The Christian-Democratic Group, along with the European Commission, answers this question unreservedly in the affirmative.

This new legal form, which is to be made available to trade and industry together with the existing legal forms in which an undertaking can be operated, will, in our opinion, create new opportunities for economic cooperation. Only time will tell whether extensive use will, in fact, be made of the opportunities. I personally expect that European trade and industry will react positively to this new legal instrument.

I base this expectation on the clear advantages afforded by this project.

In the first place, I would point to the fact that a European Company will not be bound to the national law of one Member State. It is a European, supranational legal form. When setting up the company, therefore, the founders do not need to opt for the national law of one of the partners. From the psychological point of view, this is a very important factor and this has been shown by experience of the past few years in relation to certain forms of cooperation. From the national viewpoint, the European Company is a neutral legal instrument. In the second place, I would point out that every European Company will have legal validity over the whole

territory of all the Member States and that its form will be identical in all the Member States. This identity of legal territory and form is important not only for the problem of the registered office and movement of the registered office, but will also greatly promote the integration of the European Company in the business life of the individual Member States, because in no Member State can this company be seen as an intruder. Third parties doing business with this company will never be faced with unpleasant (legal) surprises. In the third place, I would like to point out that, in my opinion, a European Company will also have advantages in regard to financing. It will have easier access to the national purse of the Member States and, therefore, easier access to the European capital market as a whole. I also think that in the case of a European Company it will be easier to set up international bank syndicates when issuing securities and the like.

While generally approving the basic objective, the Christian-Democratic Group was critical of certain sections. The criticism was directed, in particular, at Article 2 of the draft regulation, in which the authority to establish a European Company is limited to sociétés anonymes incorporated under the law of the Member States. This restriction is illogical: there are no restrictions on being a shareholder, why should there be any on being a founder? Anyone who can, in principle, be a shareholder of a European Company, must also, in principle, be able to be a founder of the company. In our opinion, this restriction is harmful to the general objective of the European Company, and is not made necessary by the - otherwise justified - wish to avoid complications in the operation of the instrument.

A second point of criticism concerns the rules governing the financial reports. In a company which is being made increasingly democratic, the establishment of a new legal form must not lead to a reduction in the flow of information, in particular to those directly concerned, the employees and those who put up the capital. It is not stipulated, for example, that the report must provide information in regard to the solvency of the undertaking.

It gives the Christian-Democratic Group great satisfaction to note that one of its members, Mr BRUGGER, as rapporteur, has rendered an outstanding service in the creation of a new legal instrument which offers the opportunity of making a substantial contribution to the economic development of Europe and rising above national feeling.

OVERSHADOWED BY WORKER PARTICIPATION - SOME ALMOST FORGOTTEN ASPECTS OF THE STATUTE OF THE SE

by Dr Helmut ARTZINGER

Understandably, in the debate on the statute of the Societas Europaea (SE), the question of worker participation was well to the fore. It was the dominant political theme. The Commission's draft statute, however, also contains some interesting stipulations on other matters, three of which will be discussed here.

As well as worker participation, the question of taxation will also be crucial for the future of the SE. In all Member States, the burden of taxes on trade and industry has reached a level such that a difference of only a few percent could initiate a move towards the Member States with lower taxes. The Commission has accordingly refrained from giving the SE a special tax status; the company will be subject to the tax laws of the country in which it is registered. The European Parliament expressly approves this principle in paragraph 19 of its resolution. Title XII of the statute dealing with taxation therefore contains only a few rules on conflicting legislation which the Legal Affairs Committee has slightly amended.

The proposed arrangements will not satisfy the European-minded person: first of all, there is no European tax law. It is rather the restricted principle of the sovereignty of the Member States which still applies. But - as a first step in penetrating the national barriers - the Council of Ministers should now take an early decision on the proposals for directives submitted to it years ago which concerned a common tax system for mergers, splitting-up of companies, etc., and should decide on a common tax system for parent companies and subsidiaries.

The committee responsible has made no changes to Title VII Groups of Companies (Articles 223-240) on the Commission's proposal, but as paragraphs 95 to 110 of the explanatory statement show, this was only after intensive discussion. It would have been regrettable if the regulations in this section - as proposed in one amendment - had been deleted and not replaced. The group of companies is now a widespread phenomenon throughout the economic life of all Member States. Even if it is considered to be an undesirable phenomenon - a decision about this must be reached in the Law on Competition - company law cannot ignore it.

Admittedly, this particular area is still in a considerable state of flux. The Commission is, therefore, to be thanked for having proceeded cautiously in the rules and left most things to later development. The Legal Affairs Committee is to be thanked for endorsing this view by

rejecting amendments which went further than this. This applies in particular to the central problem of the group of companies: legal independence combined with economic dependence. The rights of minority shareholders and creditors must be adequately protected in this connection. The statute of the SE shows one way of doing this.

Again in the case of the third topic to be discussed here - Title VI Preparation of the Annual Accounts (Articles 148-222) - the Legal Affairs Committee has left the Commission's proposals unchanged; Parliament has rightly followed its lead.

This is a highly technical area and a courageous step has been taken in Article 181 with the introduction of the replacement cost as a possible yardstick for valuation. In view of the progressive erosion of currencies, any aid in fighting the illusion that a mark is always a mark and a lira is always a lira, etc. can only be welcomed. Here again, however, the new rule does not preclude future developments, but remains open to them. This is a balanced view which can only be welcomed.

Thus this brief note shows, with three examples, that the statute for the SE adopted by the European Parliament contains progressive rules applying to matters outside the complex question of worker participation and the Council of Ministers should make these available soon to the industries of the European Community.

GIOVANNI BERSANI: A NEW FACTORY DEMOCRACY

Between the various and antithetical methods of capitalist management on the one hand, and State-run enterprise on the other, the idea of worker participation in the European company has been gaining ground - not as a compromise notion, but as a new concept seeking to resolve in a positive way the basic contradictions with which our economic system has been ridden from its inception.

It is a concept which, while fully respecting the mutual independences established in an advanced democracy, enables all the social forces to participate in the critical phases of productive life and - in a broader sense - in the development of economic democracy.

Personally, I belong to a political and ethical movement that has always believed participation to be the best method of overcoming the basic contradictions inherent in our economic and social system.

The movement has, at times, made the mistake of not believing sufficiently strongly in this principle, but no one can deny that historically, it was, in every case, the first to try to put the principle into effect and has introduced experiments, such as those in co-management in Germany, that all the world has watched with interest.

There remain, however, some problems, which I shall now briefly discuss. The first concerns the relevance of the measures under examination to the multinational concerns. I am of the opinion that the problem of the 'multinationals' should be considered in a wider legislative context, one that would embrace rules on competition, on 'dominant positions', the provisions of the Fifth Commission Directive, measures on concentration of business enterprises and the recent guide-lines of Community policy on multinationals. Such a spectrum of measures might provide a legal and economic framework in which the serious malpractices of which we are all aware could be eliminated.

We are not fundamentally opposed to concentration, whenever it is justified technically, economically and scientifically by the conditions prevailing in that larger sea of the world economy on which our European economic ship is now launched and must ride out the gales of its competition.

What is necessary, is to prevent powerful financial groups and big capitalistic techno-structures from using the interdependencies and their own strength to upset the democratic balance in certain countries or to gain influence and a dominant position in them in contradiction to our 'open' concept of economic life and social relations.

To turn now to the problem of participation, we should bear in mind that this has too often been rejected out of hand by those who saw it, and indeed still see, as a nebulous abstraction, or an enticing snare for workers' organizations, or as an alienating involvement damaging to the workers themselves.

This, in my view, constitutes one of the most sensitive social aspects of the problem.

The workers should be told that, of course, they have to be on their guard, but that at the same time there is no harm in adopting a less pessimistic attitude, at least as far as their own role is concerned, despite the risks that this may involve.

We should not forget, after all, that there exists, counter balancing the danger of involving workers in the general interests of the enterprise, antagonistic to their own, a strong sense of their own independence acquired through the efforts of their representative organizations. This is all the more so now, when trade-union organizations have adapted to the new international realities.

Today, following the creation of the European Trade-Union Confederation, the ETUC, the representative organs of syndicalism are gradually making contact with the new economic, social and democratic realities of the European Continent.

This new framework can of itself facilitate the solution of the problem that has always, and understandably, preoccupied the workers.

Participation, undoubtedly, involves some complex issues, which should constantly be kept in sight if we are to avoid the trap of lip-service conversions or facile optimism.

Their adequate solution requires a sufficient social maturity in all the social parties involved, a deeper and more vital interplay of tensions, a renewed sense of fitness and of realism.

The problems of industrial and factory democracy must be seen in a new and different light, in the light of responsibility that does not exclude the independence of the workers' representative forces, or that of the representative forces of the shareholders; it is indeed, a responsibility built on these forces.

This is why I am convinced of the value of the reform, and especially of the new formula for the composition of the Supervisory Board: 1/3 of the members elected by the shareholders, 1/3 by the workers, and the remaining 1/3 co-opted by both sides under the accepted procedural safeguards.

This formula ensures substantial parity between shareholders and workers. It provides, or rather can provide, for a real power of co-decision on fundamental economic and social problems in the enterprise.

There are thus being introduced in the European Community principles for which, I, too have fought in my modest way, but often in conditions far from easy, for in a country like Italy the high incidence of social conflicts is all too frequently invoked not only as a reason but also as an excuse for doing very little in this area.

This provision may therefore supply the final practical impetus to launch our Community on the road of a real social policy that can obtain the collaboration of the great European popular masses and open broad perspectives of industrial, social and political democracy.

I have no illusions as to implementation of the task: it will be difficult and the obstacles by no means few. Many and tenacious forces will oppose the spread of the principle. Many forces of the contrary persuasion will create difficulties in the way of its systematic and open application.

But that has ever been the case with all developments of any real importance.

A CONTRIBUTION TO EUROPE

by Kurt HARZSCHEL

With the adoption by the European Parliament of the regulation submitted by the Commission of the European Communities for a statute for the European Company, an important contribution has been made to the possible future standardization of company law in the Community. The urgent demand made by the Christian parties of Europe for early implementation of economic and monetary union as a step towards political union also includes, in my opinion, the obligation to seek ways of creating within this economic union a standard forward-looking company law. The increasing interpenetration and expansion of industry across national boundaries, as well as its concentration, also urgently require regulation on a European basis. All these developments have certainly helped speed up the adoption of a European company constitution. By its constructive and intensive involvement, the Christian-Democratic Group has played an outstanding part in the shaping and adoption of the regulation and has made a decisive contribution to the preparation of the draft.

After years of thorough discussion, the Parliament has now adopted a draft which can rightly be considered as pointing the way to the future. The Council of Ministers is now urged to adopt a position so that this regulation can become effective. This new law will admittedly be of interest only to those firms who wish to make use of this legal form, but nobody should fail to recognize that this could be a general model for a new law on undertakings at Community level.

The basic consideration in the discussions was, on the one hand, to ensure that under the new law the undertaking and its organs are workable, but that, on the other hand, the role of the employees in the undertaking, their rights of cooperation and codetermination, must be satisfactorily established. Without satisfactory terms for the employees, there would be no permanent solution and industrial peace and collaboration in partnership would be impossible. The arrangements which Parliament has produced seem to me to represent a successful attempt, on the one hand, to create a modern workable law on undertakings, and, on the other, in involve the employees to a greater extent in the decisions of the undertaking and in overall responsibility. There is provision for this at two levels: first, within the European Works Council and, secondly, in the equal participation in the Supervisory Board. The European Works Council is a new idea to look after the interests of

all employees within one undertaking across the borders within the Community. The interests of employees can, therefore, be protected more effectively in collaboration with the representatives of the individual works. At the same time, however, this new regulation does not mean a limitation on national representation for the individual works, but an improvement at the level of the undertaking. These new rights also place the management and the owners of the capital in an altered situation, in that they have to seek closer cooperation with the representatives of the employees. The arrangement also offers the opportunity, however, to shape and practise relations between the two sides of industry at European level. In testing out the arrangements for worker participation, which have not previously existed in this form in the Community, there is an opportunity to produce a model for Europe. These arrangements also satisfy a requirement by employees in almost all countries. The fear was frequently expressed in the discussions that the rights of participation of the employees were defined too strongly and that, therefore, the system would not be accepted by the undertakings concerned. It certainly cannot be denied that, for the shareholders, there will be greater compulsion for cooperation. It would be regrettable, however, and the political consequences incalculable if this attempt were to fail. The social market economy and social peace can only be maintained in the long term if employee participation in the undertaking is assured and there is cooperation at the same level. It is therefore in our interests to help this attempt to succeed. It is to be hoped that all responsible circles will work for success in the deliberations of the Council and in the practical application of this regulation in the undertakings, and that it will successfully pass the practical test as soon as possible.

THE EUROPEAN COMPANY, SOCIETAS EUROPAEA, A MILESTONE ON THE PATH TO EUROPEAN INTEGRATION?

by Dr. Hermann SCHWORER

Humanization of the world of work

In the discussions on the European Company, considerable attention was devoted to the subject 'shaping the world of work'. I emphasized in the discussions that, in addition to the problems of competition and the new technologies, there was an abundance of topics which must be given priority treatment. These problems are: prevention of incapacity at an early age, automation of particularly dangerous jobs, curing of occupational diseases, assembly line work, piecework pay or new forms of payment, women at work, three-shift working, removal of the double burden on the working wife, problem of older employees and handicapped persons in society, and particularly those whose energies are exhausted at an early age. This list does not claim to be complete. It can be placed under the heading 'humanization of the world of work'. These problems cannot be solved by means of a perfect 'formula for worker participation' but only by patient cooperation between all parties involved in the economic process, without regard for time and money.

In my opinion the European Company will be judged on how far it is willing and able to deal with these difficult problems. I am of the view that we could have made much greater progress in this already if only some of the energy applied in the ideological discussion of worker participation had been used to solve these problems. In my opinion this is more important for the continuation of our form of economy, and thus for the new company, than the subject of worker participation in the form it takes today. The desire for partnership is crucial. Only worker participation which ensures responsible cooperation on a partnership basis between capital and labour can therefore help to overcome all the problems listed above.

In the operation of the undertaking there must be no stalemate situation in important decision-making bodies. If the Works Council co-operates fully, it will also be in the interests of the employees for the final decision on questions of business policy to be taken on the capital side. Without the involvement of broad strata of private shareholders, it will not be possible to finance the future of our economic undertakings. This applies to investors outside the firm, from officials to housewives,

but it applies in particular to the staff of the firms. In order to reduce the struggle for a share in the growth of productivity, the individual employees of the undertaking must therefore be involved by co-responsibility and co-ownership in the decision-making processes.

Attention urgently needed for medium-sized firms

The regulation lays down law for limited companies, i.e. mainly the large undertakings of our economy. In the public mind these often represent European industry. It is often forgotten, however, that the smaller and medium-sized firms have a much greater share of the economic life of this Community. Many more people are dependent on their activities than on the large firms. In the Federal Republic the ratio is approximately two-thirds to one-third.

If this regulation on the European Company provides new opportunities for economic activity for the large firms, action must also be taken in favour of the small and medium-sized firms. An action programme is urgently needed. This is not a question of subsidies but solely one of equal conditions of competition for the large and the small.

One particularly important point is the question of capital procurement. In periods when investments are becoming more and more capital-intensive, ways must be found of giving the medium-sized firms access to the capital market. This can be done, for example, through finance companies or credit guarantee associations.

It is exceptionally important for long term capital to be made available to medium-sized firms on reasonable terms.

Another point is the development of new products and techniques. Joint arrangements must remove some of the risks and costs for small and medium-sized firms, so that they can continue to exist alongside the large firms.

The question of cooperation is also of crucial importance. Thankfully the Commission has already submitted a regulation. This draft is designed to overcome legal, fiscal and psychological difficulties which still stand in the way of collaboration between independent firms across national boundaries. The European Cooperation Association, as it is called by the Commission, will not produce a new company. It is a European association of independent national undertakings of small and medium size who are willing to cooperate.

The development of European companies will certainly produce positive political effects and help Europe to gain in importance at the level of international politics.

The new European Company has important tasks to carry out. It must constitute an example from the point of view of social justice but must also be economically successful. It must be supplemented by small and medium-sized firms. Initiative, willingness to take risks and the personal involvement of its owners are essential for the market economy. Only in this way will the economy of the Community serve mankind - and this is the objective and purpose of our work together.

A EUROPEAN MODEL OF WORKER PARTICIPATION

by Gerd SPRINGORUM

When the European Parliament adopted the proposal from the Commission of the European Communities for a regulation embodying a statute for a European company on 11 July 1974, it and the committees responsible for this statute, had already been working on this problem for almost four years, since this proposal for a regulation is concerned not merely with this statute but also partly with the constitution of such a European undertaking in which the rights and obligations of the employer and the employee are to be extensively defined.

The controversy surrounding this whole set of problems is demonstrated by the simple fact that more than 150 amendments were tabled in the European Parliament in the first discussion of the statute in 1972 and for reasons of time a debate and decision in the Parliament itself were impossible. The matter therefore had to be referred back to the Legal Affairs Committee as the committee responsible.

In spite of so many controversial points, the most difficult problem in the discussions in the Legal Affairs Committee throughout all these years remained unsettled, namely that of the form of worker participation.

In the proposal for a regulation submitted by the Commission in 1970 there was provision for one-third participation by the employees in the Supervisory Board. It was not surprising that this seemed too little to many people and too much to others and the consequence was that, even in the various responsible committees, there were different results in the voting as to whether the proposal of the Commission should be replaced by parity representation.

As the major centre party, the Christian-Democratic Group was aware that it bore the main responsibility in this matter, since its vote would produce a majority for one side or the other in this explosive problem of social policy.

A few days before the crucial sitting of Parliament, the Christian-Democratic Group decided - with an extremely small majority - in favour of parity representation (it should be noted here that in Parliament the Christian-Democratic Group submitted in exemplary fashion to the majority decision). This fundamental decision by the Group was accompanied at the

same time by an instruction to amend Article 137, which is concerned with worker participation, in such a way that it should contain not only parity representation but also the practical details of its implementation.

The model submitted to Parliament on 11 July does not accord with any of the previous systems applied in the Community countries or those under discussion (it can be said perhaps, however, that it represents a middle path between the system applied in the Netherlands and that used in the German iron and steel industry, avoiding their disadvantages and retaining their advantages).

In this system two-thirds of the Supervisory Board are represented on a parity basis by persons closely involved in the undertaking - either on the capital or on the labour side. These two-thirds have to co-opt a further third, but there are various conditions applying to this election.

The following have the right of nomination: the Works Council, the General Meeting and the Board of Management. This balanced right of nomination will play an important part in practice because it solves the problem of an uneven number in the co-opted third, preventing a stalemate situation in the Supervisory Board.

The requirements of professional experience and independence for the co-opted members of the Supervisory Board were essential pre-requisites for the Christian Democratic Group, however much they were disputed by other groups.

We were of the opinion that this requirement would help to give the pluralism which is so important for democracy an additional chance to counter the danger of syndicalism, to eliminate the principle of conflict and to prevent the formation of groups within the Supervisory Board.

It has been asked repeatedly what the apparently obscure formula 'representatives of the general interest' is intended to mean. In fact, this is a rather negative clause. Specific interests aimed at a particular good should not be to the fore, but rather the general good to which the future European company should also feel itself committed.

With a large majority which surprised us all, a majority in all groups from right to left, the European Parliament decided for this system of worker participation. This is an indication of the balance and equilibrium in this proposal which takes account of all parties involved in an undertaking.

The European Parliament can only hope that the Council of Ministers will adopt the proposal and that, in the discussion on worker participation which is now intensifying in all Member States, the thoughts of the Christian-Democratic Group of the European Parliament will also find a place.